

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TQP DEVELOPMENT, LLC

Plaintiff,

v.

MERRILL LYNCH & CO., INC., et al.,

Defendants.

Civil Action No. 2:08-cv-00471 TJW/CE

**TQP DEVELOPMENT, LLC'S ANSWER TO COMERICA INCORPORATED AND
COMERICA BANK & TRUST, N.A.'S COUNTERCLAIM**

Plaintiff TQP Development, LLC (“TQP”) hereby Answers the Counterclaim of Comerica Incorporated and Comerica Bank & Trust, N.A. (collectively, “Comerica”) as follows:

1. In response to the allegations in paragraph 1 of Comerica’s Counterclaim, TQP admits that it has submitted to the jurisdiction of this Court for the purpose of the adjudication of its Complaint in this action and related counterclaims. The remaining allegations in paragraph 1 are legal conclusions which require no response.

2. In response to the allegations in paragraph 2 of Comerica’s Counterclaim, TQP admits that it has submitted to venue in this judicial district for the purpose of the adjudication of its Complaint in this action and related counterclaims.

3. On information and belief, TQP admits the allegations in paragraph 3 of Comerica’s Counterclaim.

4. In response to the allegations in paragraph 4 of Comerica’s Counterclaim, on information and belief, TQP admits that Comerica Bank & Trust, N.A. is a subsidiary of Comerica Incorporated. TQP lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 4, and on that basis denies the allegations.

5. TQP admits the allegations in paragraph 5 of Comerica’s Counterclaim.

6. In response to the allegations in paragraph 6 of Comerica's Counterclaim, TQP incorporates by reference paragraphs 1 through 5 of this Answer as if fully set forth herein.

7. TQP admits the allegations in paragraph 7 of Comerica's Counterclaim.

8. TQP admits the allegations in paragraph 8 of Comerica's Counterclaim, including that its contentions regarding infringement comprise what is stated.

9. TQP denies the allegations in paragraph 9 of Comerica's Counterclaim.

10. To the extent the allegations in paragraph 10 of Comerica's Counterclaim are other than legal conclusions (which require no response), TQP admits that Comerica denies that it infringes the '730 Patent. The allegations are otherwise denied.

11. In response to the allegations in paragraph 11 of Comerica's Counterclaim, TQP admits that Comerica purports to seek a judicial declaration that it does not infringe or contributorily infringe, nor has it induced infringement of the '730 Patent. TQP denies that Comerica is entitled to such a declaration.

12. In response to the allegations in paragraph 12 of Comerica's Counterclaim, TQP incorporates by reference paragraphs 1 through 11 of this Answer as if fully set forth herein.

13. To the extent the allegations in paragraph 13 of Comerica's Counterclaim are other than legal conclusions (which require no response), TQP denies these allegations.

14. In response to the allegations in paragraph 14 of Comerica's Counterclaim, TQP admits that Comerica purports to seek a judicial declaration that the '730 Patent is invalid. TQP denies that Comerica is entitled to such a declaration.

PRAYER FOR RELIEF

TQP denies that Comerica is entitled to any relief requested in the Prayer for Relief in its Counterclaim, or any relief whatsoever.

Dated: March 23, 2009

Respectfully submitted,

TQP DEVELOPMENT, LLC

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CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served on March 23, 2009, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Marc A. Fenster

Marc A. Fenster